

**COMMENTS OF HOFFMAN FAMILY LIMITED PARTNERSHIP  
ON THE GENERAL SERVICE ADMINISTRATION'S  
DRAFT ENVIRONMENTAL IMPACT STATEMENT  
FOR THE U.S. PATENT AND TRADEMARK  
OFFICE CONSOLIDATION  
*May 26, 1998***

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(May 26, 1998)**

Trammell Crow Real Estate Services, Inc., on behalf of the Hoffman Family L.L.C. (Hoffman), is pleased to present these comments on the draft environmental impact statement (DEIS) for the U.S. Patent & Trademark Office Space Consolidation Project. Hoffman is the Offeror of the Eisenhower Avenue Site in Alexandria, Virginia ("Hoffman Project"). We believe the DEIS is, on the whole, an excellent work product that complies with all of the disclosure requirements in the National Environmental Policy Act (NEPA) and the regulations implementing that Act issued by the Council on Environmental Quality (CEQ)<sup>1</sup> and the General Services Administration (GSA)\*. We commend GSA for the breadth and clarity of the information provided in this draft statement.

We request that the disclosures in the final environmental impact statement (FEIS) reflect the following comments, which are offered to clarify or update certain key sections of the DEIS, and to respond to comments that have been presented by others, particularly the Charles E. Smith Companies ("Smith Companies").

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<sup>1</sup> 40 CFR Parts 1500-1508 (referred to herein as "CEQ's NEPA Regulations")

<sup>2</sup> GSA Order PBS P 1095.4B CHGE 1.

## **I. Introduction**

Although our comments focus on the Hoffman Project, we commend GSA on the overall quality of the DEIS. We believe the DEIS adequately discloses the potential environmental impacts of all three consolidation projects and the “no-action” alternative.

We find it necessary to address a number of the statements that have been made on behalf of the Charles E. Smith Companies’ (“Smith Companies”). In particular, we feel compelled to respond to the many inaccurate and misleading comments presented on Smith Companies’ behalf by attorney Nicholas C. Yost, both orally at public meetings and in written statements submitted to GSA. As discussed below, we believe that a number of Smith Companies’ statements about the inadequacy of the DEIS in general, and the potential environmental impacts of the Hoffman Project in particular, are factually inaccurate, legally unsupportable, or both.

## **II. Specific Comments on the Disclosures in the DEIS**

### **A. The Overall Adequacy of DEIS**

In his “Statement of Charles E. Smith Companies,” dated April 29-30, 1998 (“Smith Statement”), Mr. Yost attacks the DEIS as “characterized not so much by misdirection as by omission and by failure to take the ‘hard look’ demanded by the National Environmental Policy Act (NEPA).” The Smith Statement argues that the “shortcomings of the DEIS in

several critical respects are such as to preclude meaningful analysis and require a revised DEIS to be prepared and circulated for comment prior to proceeding to a Final EIS (FEIS).”<sup>3</sup>

We take strong exception to these assertions. In our experience, the scope and quality of the disclosures in this DEIS are unprecedented in federal projects of this type. The GSA’s responses to comments on the DEIS, and the relatively minor additions or clarifications to the DEIS proposed by Hoffman or other commenters, can properly be reflected in the FEIS, as is common in NEPA reviews of this nature. The U.S. Supreme Court has held that an environmental impact statement need only be supplemented when new information shows that a future federal action will significantly affect the quality of the human environment in a manner or to an extent not previously considered.<sup>4</sup>

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Smith Companies can point to no significant environmental impacts that GSA fails to consider in the DEIS. Instead, Smith either criticizes the need for a consolidation project in the first place or faults GSA for not making worst-case assumptions where data on potential environmental impacts is incomplete. Courts have uniformly held that NEPA is *not* to be used to challenge a federal agency’s determination that a particular action is needed.<sup>5</sup> In addition, the U.S. Supreme Court has made clear that NEPA does not require an EIS to address uncertainty through a worst-case analysis.<sup>6</sup>

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<sup>3</sup> Smith Statement p. 1

<sup>4</sup> *Marsh v. Oregon Natural Resources Council*, 109 S. Ct. 185, 490 U.S. 360 (1989).

<sup>5</sup> See, e.g. *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978) (NEPA does not authorize courts to substitute their judgment for that of Congress or the executive branch that a particular agency action is necessary or appropriate).

<sup>6</sup> *Robertson v. Methow Valley Citizens Council*, 109 S. Ct. 1835, 490 U.S. 332 (1989)

Accordingly, there is no need whatsoever for GSA to issue a supplemental DEIS and subject that document to another round of public comment, as Smith suggests. CEQ's NEPA regulations require the issuance of a supplemental DEIS only where (1) the federal agency makes substantial changes in the proposed action that are relevant to environmental concerns, or (2) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact.<sup>7</sup> Neither is the case here. 1-1

The Smith Statement criticizes the DEIS for what it characterizes as "NEPA structural failings."<sup>8</sup> According to Smith, the most serious structural failing is the inadequacy of the statement of "Purpose and Need." This criticism is totally misplaced. CEQ's NEPA Regulations state that the EIS "shall *briefly* specify the underlying purpose and need to which the agency is responding in proposing alternatives including the proposed action" (emphasis added).<sup>9</sup> The statement of purpose and need in the DEIS more than meets this requirement. That statement is a reasonable, well-articulated summary of why the consolidation project is considered necessary. It concludes that 2-1

the proposed action includes expansion space required to accommodate projected increases in patent and trademark filings, consolidation of PTO's space into no more than eight buildings to maximize and improve efficiency, and upgraded physical facilities that meet all current regulations and PTO's automation needs. DEIS p. 1-2.

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<sup>7</sup> 40 CFR § 1502.9(c)(1).

<sup>8</sup> Smith Statement pp. 3-6

<sup>9</sup> 40 CFR § 1502.13.

It should be emphasized that Smith Companies' critique does not actually take issue with this statement. Instead, Smith argues that none of the proposed alternatives described in the DEIS is *necessary to meet this purpose and need*. It is Smith's position that "[i]n order to be achieved, none of these needs requires selection of the expensive Action alternatives described in the DEIS."<sup>10</sup>

In other words, Smith's real complaint is that the DEIS fails to demonstrate that the consolidation proposals will attain the purpose and need of the federal action more cost-effectively and more efficiently than the no-action alternative. This argument is not only factually inaccurate, it also reflects a misunderstanding of the requirements of NEPA and the basic purpose of an EIS. An EIS is not meant to be a written justification of the federal action in question. Rather, the purpose of an EIS is to assure complete disclosure of the environmental impacts of that action. As noted in CEQ's NEPA regulations, an EIS "shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." "Stated another way, the basic objective of NEPA is not to assure that the proposed federal action is "correct," but to provide a full and accurate disclosure of the environmental impacts of that action. Given the thoroughness of the disclosures in the DEIS, we have no doubt that the FEIS will fully achieve this objective.

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<sup>10</sup> *Id.* p. 3.

<sup>11</sup> 40 CFR § 1502.1.

GSA should soundly reject Smith Companies' argument that the purpose and needs of the consolidation project can be met at the existing site for less cost than any of the consolidation proposals. Not only does this argument have no place in the NEPA process (as noted above), it is dead wrong. Remaining in the existing complex of buildings would not only frustrate PTO's operational needs, it would also be more costly in the long-run than any of the consolidation options.

Smith Companies' comments completely ignore the fact that the GSA and PTO, through two years of intensive effort, have developed a detailed lease prospectus that thoroughly documents the advantages of this consolidation project. The Executive Branch endorsed the project by authorizing submittal of the prospectus to Congress, and both Houses of Congress subsequently approved the project by resolution.

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More recently, the PTO's conclusions regarding the need for and cost-effectiveness of the PTO consolidation were confirmed by Jefferson Solutions, Inc., an independent consulting firm, on behalf of the Department of Commerce. The Department retained Jefferson to assemble a multi-disciplinary team to review and evaluate the PTO's consolidation and space acquisition process. The Jefferson team was asked to evaluate the PTO's need for new space, the type and amount of space needed, PTO's management of the process, and the PTO's responses to concerns raised by the Inspector General.

As noted in its final report, submitted on May 15, 1998,<sup>12</sup> among the conclusions reached by the Jefferson team are the following:

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<sup>12</sup> "Facility Space Analysis for The Patent and Trademark Office," by Jefferson Solutions, BTG, Inc. and Economic Research Associates, submitted May 15, 1998 (copy attached as Exhibit 1).

- Under current conditions, the PTO's average annual rent of \$27.89 per occupiable square foot is well above the market price for space that can be defined as depreciated (nearing obsolescence), Class B space.
- The proposed project will produce an economic benefit to the PTO in excess of current market conditions.
- A sound process was used in determining the PTO's long-term need for space in the consolidation offices.
- The Solicitation for Offers (SFO) process appears sound and structured for a fair assessment of the submitted offers.<sup>13</sup>

The Jefferson study also expresses a concern that may say more about the real motivation behind Smith Companies' **attack** on the DEIS than anything else. The Jefferson team cautions the Commerce Department on the potential costs of delaying the SFO process:

- Any delay in the SFO process or construction schedule could result in a short-term, high-cost lease renewal. No liquidated damages clauses for delayed occupancy are included in the SFO [sic] lease as an offset to these potential costs.<sup>14</sup>

Of course, the one party that stands to benefit from such a delay is the Smith Companies, the current lessor of the existing PTO complex. It is well known that the NEPA process has been effectively used in the past by those whose primary motive was to delay unwanted federal actions for as long as possible. It is clearly in Smith Companies' financial interests to use the NEPA process the same way here. We encourage GSA to evaluate

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<sup>13</sup> *Id.* p. 1.

<sup>14</sup> *Id.* p. 14.

Smith's comments on the DEIS in that light, to resist such an abuse of this process, and to proceed promptly with the issuance of the FEIS and the record of decision.

In sum, Smith's attack on the "structural failings" of the DEIS misconstrues the fundamental purpose of the NEPA process. In the guise of challenging the adequacy of the DEIS disclosures, Smith, in effect, is challenging the government's underlying decision to consolidate the PTO offices.<sup>15</sup> The NEPA process is not the proper vehicle for such a challenge.

#### **B. The Potential Environmental Impacts of the Hoffman Project**

On the whole, we found the DEIS discussion of the environmental impacts of the Hoffman Project, and the other consolidation projects, comprehensive, accurate and clearly written. However, we believe the FEIS could improve upon the disclosures in the DEIS if it reflects the following comments, which we offer to update and clarify certain issues that pertain primarily to the Hoffman Project.

##### **1. Land Use and Planning**

CEQ's NEPA Regulations require federal agencies to examine and disclose "[p]ossible conflicts between the proposed action and the objectives of Federal, regional and local . . . land use plans, policies and controls for the area concerned."<sup>16</sup> Where potential

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<sup>15</sup> Although Smith Companies' attacks PTO's consolidation decision now, it is noteworthy that in testimony before the Senate Committee on Environment, Transportation and Infrastructure on June 25, 1996, Michael T. Shehadi, Smith's Senior Vice President, observed that "the Smith Companies has been pleased with the manner in which this solicitation has been managed by both PTO and GSA."

<sup>16</sup> 40 CFR § 1502.16 (c)

conflicts are identified, the statement should also discuss measures that might be taken to mitigate those conflicts.”

The DEIS adequately discusses the federal, regional and local land use plans and policies applicable to the Eisenhower Avenue Site. It is precisely because the Hoffman Project will comply with these land use policies and controls that there will be no significant conflicts between these restrictions and the Hoffman Project. This is underscored by the fact that the Alexandria City Council has now granted the Hoffman Project all necessary land use and zoning approvals. We request that this section of the FEIS be expanded to discuss these City Council approvals and to address the additional comments offered below.

The plans, policies and regulations of the agencies that govern land use and planning in this area provide the regulatory framework that will assure the Hoffman Project comports with all applicable regional and local land use controls. The most important of these plans and-regulations are the Comprehensive Plan for the National Capital and the City of Alexandria’s Small Area Plans and Zoning Ordinance. 5.2-S

The Comprehensive Plan for the National Capital

The Comprehensive Plan for the National Capital provides the primary regional land use planning mechanism applicable to all of the proposed PTO projects. Reginald W. Griffith, the Executive Director of the National Capital Planning Commission (NCPC), has commented on the adequacy of the land use-related disclosures in the DEIS and on the consistency of the Hoffman Project with the Comprehensive Plan. The NCPC, as the

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<sup>17</sup> 40 CFR § 1502.16(h).

primary planning agency for the federal government in the National Capital Region, is uniquely situated to evaluate potential conflicts between the proposed PTO projects and the Comprehensive Plan. Hoffman supports the Executive Director's statements in this regard and asks that they be included in the FEIS.

Specifically, by letter to the GSA dated May 8, 1998, Mr. Griffith commends the GSA "for preparing a comprehensive document that assesses the potential impacts of consolidation at the three alternative sites." We agree with the Executive Director that the "DEIS addresses major transportation and environmental impacts and offers mitigation measures where needed."

Mr. Griffith observes that all three sites "share disadvantages" with respect to meeting certain aspects of the NCPC guidance, particularly the guidance relating to potential impacts on archaeological sites and traffic. As discussed later in these comments, Hoffman has committed to take steps to assure that its PTO consolidation project will adequately mitigate these perceived "disadvantages."

We agree with the NCPC Staff recommendation that the list of applicable policies in the Comprehensive Plan for the National Capital set out in the DEIS should be expanded to include the policy relating to the protection of the scenic qualities of the George Washington Memorial Parkway.\* Moreover, the FEIS should address the extent to which each of the consolidation proposals promote (or frustrate) this policy. In this regard, we note that the Hoffman Project will have no adverse impact on the scenic qualities of the George

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<sup>18</sup> Executive Director's Recommendations, NCPC File No. 5735, April 30, 1998, pp. 5-6.

Washington Parkway, given its distance from that roadway. In contrast, the NCPC Executive Director has concluded that the Crystal City Project would generate unacceptable negative visual impacts along the parkway and, therefore, “would have an adverse effect on this historic resource.”

#### Small Area Plans

The Eisenhower Avenue Site is within the King Street/Eisenhower Avenue Small Area Plan. As the DEIS points out, the “Small Area Plans use the concept of Coordinated Development Districts (CDD) for major underdeveloped areas to promote development consistent with the master plan on sites which will have a significant impact on the City of Alexandria.” DEIS p. 3-21.

The DEIS adequately addresses the CDD guidelines and zoning restrictions applicable to the Eisenhower Avenue Site. Development projects like the Hoffman Project require CDD special use permits and transportation management plans, and must be subject to public hearings before the Alexandria Planning Commission and final approval of the City Council. A detailed discussion of the CDD process is set out in the Supplemental Zoning Opinion of J. Howard Middleton, Jr., which was submitted on behalf of Hoffman to GSA Contracting Officer James Smale by letter dated January 21, 1997.

We request that the FEIS reflect that on April 7, 1998, the Alexandria City Planning Commission, by unanimous vote, recommended that the City Council approve Hoffman’s application for a special use permit pursuant to the CDD zoning provisions of the Eisenhower

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<sup>19</sup> *Id.* p. 7

Avenue Site. The Commission adopted the recommendation of the Commission Staff, which concluded as follows:

Staff has worked extensively with the applicant over the past several months to resolve issues related to the proposal. The proposed development is consistent with the CDD zoning on the site and with the concept plan approved by the City in February for this site.<sup>20</sup>

Also on April 7, 1998, the Commission recommended City Council approval of Hoffman's request for a special use permit for a transportation management plan (TMP), which is discussed later in these comments.

*The FEIS should note that on April 16, 1998, the Alexandria City Council approved both of these special use permits for the Hoffman Project.* 5.2-S

Smith Companies argues that the discussion of local land use controls is a "major deficiency in the DEIS." Smith claims that achieving the NEPA requirement to disclose possible conflicts between the Hoffman Project and local land use policies and controls will be frustrated "until the applicable local plans, policies, and controls" are set.<sup>21</sup> These comments ignore the fact that the plans, policies and controls applicable to the Eisenhower Avenue Site are now in place and are well understood by all concerned.

Land use controls in the City of Alexandria are defined in detail in the 1992 Small Area Plans and the 1992 City of Alexandria Zoning Ordinance. The general type, character, intensity and location of uses to which the Hoffman Project must conform are set out in the

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<sup>20</sup> Alexandria Planning Commission Docket Item #21A, Special Use Permit #97-0161, Hoffman Site -- Patent & Trademark, Planning Commission Meeting, April 17, 1998, p. 11.

<sup>21</sup> Smith Statement p. 11

CDD Guidelines in the Small Area Plan and in the provisions of the Zoning Ordinance. The DEIS presents a comprehensive discussion of the CDD guidelines and zoning restrictions that apply to the Hoffman Project, including the minor ways that the Hoffman Project, without *mitigation* measures, might be inconsistent with those guidelines. This section of the DEIS goes well beyond the level of disclosure of zoning and land use issues required by NEPA.

The FEIS should indicate that Hoffman has agreed to mitigate all of the minor inconsistencies noted in the DEIS between the Hoffman Project and the CDD Guidelines. When Smith criticizes the Hoffman Project because it “would not satisfy several guidelines of the Eisenhower Avenue Coordinated Development District,” it fails to mention Hoffman’s firm commitment to *mitigate* those inconsistencies, a *commitment* that has now been accepted and approved by the Alexandria City Council.

**5.2-S**

, The first inconsistency noted in the DEIS is the fact that the tower proposed as part of the Hoffman Project would be slightly higher than the 250-foot height restriction in the Eisenhower Avenue CDD. On February 3, 1998, Hoffman submitted a request to the Alexandria City Planning Commission for an amendment to the King Street/Eisenhower Avenue Small Area Plan Chapter of the 1992 Master Plan to increase heights permitted in the guidelines for the Eisenhower Avenue CDD. Noting that the City had already approved a height variance of 288 feet for the Carlyle Site, the Commission Staff recommended Commission approval of a 270-foot variance for the Hoffman Project. The Commission supported that recommendation, which has been unanimously approved by the City Council.

The second inconsistency noted in the DEIS is the lack of bicycle lanes and trails to connect to existing bicycle trails and facilities in the area. The FEIS should point out that Hoffman has also agreed to address this inconsistency. After Hoffman made this commitment, the City Planning Commission voted unanimously on February 3, 1998, to recommend City Council approval of Hoffman's CDD Development Concept Plan subject to the recommendations of Commission staff. One such recommendation is that "'Bike paths shall be provided within the development consistent with the City's *'Bicycle Transportation and Multi-use Trail Master Plan.'*"<sup>22</sup> As stated in the Commission's February 3, 1998 Staff Recommendation: "Staff has included a condition in this CDD approval which requires all preliminary development plans to accommodate the network of bike paths" proposed in the Master Plan and provides that "specific requirements will be approved in conjunction with each preliminary development plan." The City Council approved the Concept Plan in February 1998, subject to this and other mitigation measures. In April 1998, the Council unanimously approved the preliminary development plan, which incorporates the construction of bike paths as part of the Hoffman Project.

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The third inconsistency noted in the DEIS is the lack of adequate landscaping or buffering between the proposed project and areas adjacent to the Metrorail tracks and the highway. Again, the FEIS should disclose that Hoffman has agreed to address this inconsistency. As reflected in the Commission's recommended approval of the Hoffman Site

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<sup>22</sup> Alexandria Planning Commission Docket Item # 13-A, CDD - Concept Plan, Hoffman Site, Planning Commission Meeting, February 3, 1998.

Concept Plan on February 3, 1998, Hoffman will landscape and buffer roadways and the Metrorail tracks, as shown on the Landscape Plan. Among other things, Hoffman has agreed to create a substantially uniform character along the portion of Eisenhower Avenue between Holland Lane and Telegraph Road, incorporating elements of the approved Carlyle streetscape for Eisenhower Avenue. Hoffman also agreed to design the plaza open space for the project north of the Metrorail station to connect to the adjoining Mill Race project and to coordinate with the Mill Race project team on the design of the areas between the two projects, including the connecting open space and the area under the Metrorail tracks.<sup>23</sup> As noted above, the City Council approved the Hoffman Concept Plan in February 1998.

With these agreed-upon mitigation measures, the Hoffman Project will be fully consistent with the overall goals and objectives of the CDD guidelines in the Small Area Plan. As the DEIS points out, even with these minor inconsistencies, the Hoffman Project, in combination with the residential and commercial developments under construction or in planning along Eisenhower Avenue would “appear to fulfill the goals and objectives of the Small Area Plan and CDD zoning.” DEIS at 4-20. This finding is consistent with the conclusion of the Commission staff that the Hoffman Project “is consistent with the CDD zoning on the site and with the concept plan approved by the City in February for this site.”

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In sum, we request that the FEIS reflect that the Hoffman Project meets all of the goals and objectives of the Comprehensive Plan for the National Capital and the Small Area Plan and CDD zoning requirements, particularly now that Hoffman has agreed to mitigate the

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<sup>23</sup> *Id.* p. 3-4.

minor inconsistencies noted in the DEIS. Smith Companies' self-serving statements to the contrary are misleading and inaccurate.<sup>24</sup>

## 2. Cultural and Aesthetic Resources

We agree with the NCPC Staff that the DEIS "admirably describes and analyzes the alternatives, the study areas, the archaeological and historic resources within each area, and the impacts or effects."<sup>25</sup> The DEIS is especially thorough with respect to its assessment of the potential archaeological and historic resource values of the Eisenhower Avenue Site and the other proposed sites. As stated in the DEIS, GSA's evaluation of these archaeological/historical values was conducted under both NEPA and Section 106 of the National Historic Preservation Act of 1966 (16 USC § 470) (NHPA). See DEIS p. 3-62. Section 106 of the NHPA establishes a comprehensive consultation and evaluation process. As part of that process, GSA consulted with the Virginia State Historic Preservation Office (VASHPO), the Advisory Council on Historic Preservation, the City of Alexandria Planning Office, and other interested parties. DEIS pp. 3-62 to 3-63.

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GSA identified potentially historic properties in accordance with 36 CFR 800.4 and the Secretary of Interior's "Standards and Guidelines for Archeology and Historic Preservation." *Id.* p. 3-64. GSA conducted research to identify affected historic properties at

<sup>24</sup> It is also worth noting that courts have uniformly held that, under NEPA, the failure to demonstrate that a proposed federal action is fully consistent with a local zoning law does not necessarily mean the federal action will have an adverse environmental impact, especially where the zoning law in question is not premised on purely environmental concerns. *Missouri Coalition for the Environment v. Corps of Engineers of U.S. Army*, 866 F.2d 1025 (8th Cir. 1989), *cert. den.*, 110 S. Ct. 76,493 U.S. 820 (1989); *Village of Palatine v. U.S. Postal Service*, 742 F. Supp. 1377 (N.D. Ill. 1990); *Town of Groton v. Laird*, 353 F. Supp. 344 (D. Conn. 1972).

<sup>25</sup> NCPC File No. 5335, Background and Staff Evaluation, p. 6.

the VASHPO office and at the local planning offices, including the Alexandria Archaeology Office and Arlington County Historic Affairs and Landmark Review Board. Local experts and historical organizations were also consulted, and GSA conducted archaeological field investigations on-site and in the areas surrounding each site.

To assist in this process, Hoffman made available to GSA an historical and archaeological study of the Cameron Mills historical area, located to the north and east of the Eisenhower Avenue Site. This study was prepared for Hoffman in 1990 by Engineering Science, Inc. In addition, the reported historical uses of the Eisenhower Avenue Site prepared by F&R in its Phase I reports provided GSA detailed information on prior uses of the site.

**7.1-5**

Building on all of these information sources, the DEIS presents a comprehensive assessment of the historical and archaeological resources believed to be located in and around the planned Hoffman Project. Given this level of research, it is difficult to comprehend the contention of Smith Companies that GSA's historical and archaeological survey failed to meet the requirements of NEPA.<sup>26</sup> Ironically, Smith's own environmental consultant, SCS Engineers, concluded by letter dated April 28, 1998, that "the draft EIS does a relatively thorough job of identifying historical property use..."<sup>27</sup>

Smith Companies retained Joseph Hopkins Associates, Inc. (JHAI), an archaeological/cultural resources consultant, to conduct an "initial review" of the potential

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<sup>26</sup> Smith Statement at 10.

<sup>27</sup> Letter from J. Marshall and M. McLoughlin, SCS Engineers, to Kenneth L. McVearry, Charles E. Smith Realty, April 28, 1998 (Attachment D to Smith Statement).

impacts of the two Alexandria consolidation proposals on archaeological and historical resources in the area.<sup>28</sup> Smith apparently did not ask that this JHAI study include the Crystal City site, even though, as noted by the NCPC, “there is the potential for archaeological discovery” at all three sites, “more possibly the Crystal City site.”<sup>29</sup>

In a letter to Smith’s attorney dated April 18, 1998, JHAI’s Joseph Hopkins states that “[h]istoric review shows [the Eisenhower Avenue Site] to have been the location of the Cameron Mills Complex.” This is incorrect. The Cameron Mills site is located north and east of the Eisenhower Avenue Site. JHAI also states that the “history of the Eisenhower Avenue site appears to have been largely one of fill, which means archaeological resources are likely to still be present.”<sup>30</sup> It is interesting to compare this statement to that of Pamela J. Cressey, Archaeologist for the City of Alexandria. After reviewing the historical maps in the City’s files to determine previous land uses at the Eisenhower Avenue Site, Ms. Cressey concluded that because the site was primarily marshland until quite recently, “[n]o buildings, pasture land, orchards, fences or roads appear on any of the maps” and “it is unlikely that any land use occurred here.”<sup>31</sup>

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Smith Companies maintains that GSA’s recommended approach for mitigating archaeological values that may be discovered at the Eisenhower Avenue Site -- known as

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<sup>28</sup> Smith Statement at 10.

<sup>29</sup> Executive Director’s Recommendations, NCPC File No. 5735, April 30, 1998, p. 6.

<sup>30</sup> Attachment D to Smith Statement.

<sup>31</sup> A copy of Ms. Plessey’s letter was provided to GSA contracting officer James Smale as attachment II (D) to a letter to Smale from Robert Chagares, dated February 3, 1997.

“Archaeological Phase I Testing” -- is flawed because it “turns NEPA on its head” by, allowing the project to proceed before the nature of the archaeological values are fully determined? According to Smith, NEPA does not allow GSA to reach a final decision before the agency discloses *in detail* precisely how any historical/archaeological impacts will be mitigated.

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Similar arguments have been consistently rejected by the courts. For example, the Ninth Circuit Court of Appeals has held that a federal agency’s deferral of its decision on specific mitigation steps for a proposed pipeline until start of construction, when more detailed right-of-ways would be known, was fully consistent with NEPA.<sup>33</sup> The U.S. Supreme Court has also made clear that NEPA does *not* require agencies to include in every EIS specific measures that will be taken to mitigate the impacts of a federal action.<sup>34</sup> Here, there is a statutory mechanism available, the archaeological testing process, to mitigate any historical/archaeological values that might be affected by the Hoffman Project. The FEIS should note that Hoffman has committed to comply *fully* with this mitigation process, in close coordination with the City’s archaeological experts. Such an approach is clearly consistent with NEPA’s disclosure requirements.

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Moreover, in the unlikely event such values are discovered during site development, the Phase I testing will assure that any negative impacts on those values are adequately

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<sup>32</sup> See Smith Statement p. 10.

<sup>33</sup> *Public Utilities Com’n of State of Cal. v. F.E.R.C.*, 900 F.2d 269 (D.C. Cir. 1990).

<sup>34</sup> *Robertson v. Methow Valley Citizens Council*, 109 S.Ct. 1835, 490 U.S. 332 (1989)

mitigated. This was the mitigation approach recommended by the Executive Director of the NCPC.<sup>35</sup>

Hoffman takes very seriously its obligation to protect historical and archaeological values, if any, that might be discovered at the Eisenhower Avenue Site. In November 1997, Hoffman agreed to the City of Alexandria's request that it retain an archaeological firm to develop information on the potential archeological and historical values of the site for the City's archaeological program. This commitment was included as an agreed-upon condition in Hoffman's Special Use Permit, which was approved by the Alexandria City Council on April 25, 1998.<sup>36</sup> *This firm will conduct test excavations at the site for an Archaeological Evaluation and will prepare a Resource Management Plan, as outlined in the City of Alexandria Archaeological Standards. AN archaeological preservation measures must be completed prior to ground-disturbing activities.* These measures will be taken in close consultation with experts in the Alexandria Archaeology Office.<sup>37</sup>

7.1-1

In sum, Smith Companies' archaeological/historical values critique is baseless. GSA has been thorough and conscientious in evaluating these potential values, and this effort is reflected in the DEIS. Although we believe the possibility of encountering archaeological or historical artifacts at the Eisenhower Avenue site is remote, we note that Hoffman is

<sup>35</sup> Executive Director's Recommendations, NCPC File No. 5735, April 30, 1998, p. 6.

<sup>36</sup> Alexandria Planning Commission Docket Item # 21-A, Special Use Permit #97-0161, Hoffman Site-Patent and Trademark, Planning Commission Meeting, April 7, 1998, p. 17.

<sup>37</sup> *Id.* p. 17-18.

committed to mitigate fully any adverse impacts on significant artifacts that may be discovered there.

### **3. Transportation Systems**

The DEIS presents a thorough and well-researched assessment of the potential impacts on transportation systems from the three proposed projects, including the Hoffman Project. However, we believe this assessment can be updated and improved in the FEIS to reflect the following points.

The FEIS should note that Congress recently enacted a comprehensive transportation bill that authorized \$900,000,000 for the replacement of the existing Woodrow Wilson Bridge with twin draw bridges. This bill is expected to be signed into law by President Clinton shortly. Included in this authorization package is \$13,700,000 to fund construction of a flyover ramp that will carry traffic from the eastbound Capital Beltway to the northbound Telegraph Road to access Stovall Street directly from that ramp. Hoffman has agreed that its project will accommodate the new flyover ramp and associated improvements. These improvements will go a long way towards alleviating the concern expressed in the DEIS that traffic northbound on Telegraph Road at the merge with the off-ramps from the Beltway and the intersection with Pershing Avenue would operate at over capacity if either the Hoffman or Carlyle Projects were constructed. **8.1-3**

The FEIS should also indicate that the opening of the interchange on I-95 at the Eisenhower Avenue Connector has significantly changed travel patterns, resulting in more traffic from the west headed to the Eisenhower Valley using Eisenhower Avenue rather than **8.3-2**

exiting the Beltway at Telegraph Road. Even without the proposed Stoval Street flyway ramp, this redistribution of traffic from the Telegraph Road interchange to Eisenhower Avenue will substantially reduce the impact of the additional PTO-generated traffic at the Telegraph Road and Pershing Street connection.

In light of the probability that the interchange at Telegraph Road will be redesigned in accordance with the preferred alternative presented in the *Woodrow Wilson Bridge Improvement Study Final Environmental Impact Statement*, Hoffman has offered to make an interim improvement at this problem location. This will eliminate a portion of the weaving that occurs between the ramps from the Beltway, Telegraph Road and Pershing Avenue, significantly reducing the level of congestion that would otherwise occur at this location. **8.5-4**

In addition to the condition that the Hoffman Project must accommodate the Stoval Street flyover ramp, Hoffman's Conceptual Design Plan, as approved by the Alexandria City Council, is conditioned on the Project accommodating the widening of Eisenhower Avenue to six lanes, the realignment of Mill Road, and specific improvements to existing streets and intersections in conjunction with each preliminary development plan proposed.<sup>38</sup> The staff of Alexandria's Transportation and Environmental Services (T&ES) has been working with Hoffman to assure that the proposed development accommodates and incorporates these improvements.<sup>39</sup> **8.5-4**

<sup>38</sup> Docket Item #13-A, CDD - Concept Plan, Hoffman Site, Planning Commission Meeting, February 3, 1998, p. 3.

<sup>39</sup> *Id.* p. 7.

We also request that the FEIS address the importance of the Transportation Management Plan (TMP) Special Use Permit, approved by the City Council on April 16, 1998, in mitigating the impacts on the surrounding community from traffic generated by the Eisenhower Avenue Project. The Council's action followed the unanimous recommendation of the City Planning Commission that the Council approve Hoffman's application for a special use permit for TMP and Hoffman's traffic impact study (TIS), which was submitted with the application. The TIS considered traffic impacts in the year 2006 and at full build-out of the entire Eisenhower Avenue project, not just the PTO, in 2012. The TMP addressed a number of transportation improvements proposed by Hoffman to accommodate the anticipated increase in traffic in the planning area as a result of the Hoffman Project. 8.5-4

As noted in the Planning Commission's Staff Analysis, "Staff worked extensively with the applicant to develop a plan which accommodates the major traffic movement into the project and also provides for safe pedestrian crossings of Eisenhower Avenue."<sup>40</sup> The Staff Analysis also points out that the two new signalized intersections will include pedestrian crosswalks to the Metrorail station, providing improved pedestrian access to the Metrorail station from the north side of Eisenhower Avenue not only for the Hoffman Project, but also for pedestrians coming and going to the Mill Race project and the greater area, such as Carlyle and the Courthouse. This increased use of the Eisenhower Avenue Metro stop will not require substantial capital expenditures at this Metro station, given that the station is currently underutilized. The Commission staff noted that "in general staff is 8.5-4

**8.5-Z**

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<sup>40</sup> Alexandria Planning Commission Docket Item # 21-A, Special Use Permit #97-1061, Hoffman Site--Patent & Trademark, Planning Commission Meeting, April 7, 1998 p. 11.

supportive of the changes affecting the [Metrorail] station, and believes, in fact, that overall there will be an improvement to the vehicular and pedestrian access to the station.”<sup>41</sup>

We suggest that the FEIS also note some important *advantages* of the Hoffman Project to transportation in the area, including the following:

- The proposed placement of the PTO buildings in the Hoffman Project, bracketing the Eisenhower Metro Station, is ideally suited for maximizing rail transit as a travel mode for employees and visitors.
- Since the Eisenhower Metro Station is underutilized, increased usage of the station will not require additional capital expending.
- There is an extensive bus system supplementing the on-site rail transit service, **8.6-1** including service from Metro and the City of Alexandria, that will be more heavily utilized as a result of the Hoffman Project.
- The location of the project adjacent to the Capital Beltway and nearby arteries **8.6-2** provides excellent access by users from virtually every direction.
- The Hoffman Project will alleviate the existing traffic congestion in Crystal City caused by employees and visitors traveling to the existing PTO complex, particularly those crossing the Wilson Bridge and heading through Old Town to Crystal City on the George Washington Parkway and Route 1.

By letter dated May 20, 1998, Kerry J. Donley, Mayor of the City of Alexandria, wrote to GSA to comment on the construction of the new Woodrow Wilson Bridge. A copy

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<sup>41</sup> *Id.* at 12.

of his letter is attached hereto as Exhibit 2. We ask that the FEIS reflect the Mayor's comments on a number of anticipated traffic improvements in the Eisenhower Avenue corridor, particularly this statement:

Besides the improvements that will take place with the Woodrow Wilson Bridge project, the City has moved forward to implement a number of transportation projects intended to facilitate access in the Eisenhower Avenue corridor. The Virginia Department of Transportation opened a new interchange between the Beltway and Eisenhower Avenue near the west end of the corridor in 1997. This has improved the overall access to Eisenhower Avenue. Additionally, there are roadway improvements associated with both [the Carlyle and Eisenhower Avenue] candidate sites that will facilitate traffic operations regardless of which location is ultimately selected.

Smith Companies makes several misleading statements about the potential impacts of the Hoffman Project on local and regional traffic. These comments (noted in italics), and Hoffman's responses, are as follows:

*The DEIS fails to address the cumulative impacts of new Wilson Bridge construction, the Springfield interchange construction and the PTO project construction.*

**8.1-3**

*Response:* The traffic impacts that will occur during the construction of both the Springfield interchange and the Woodrow Wilson Bridge will affect all motorists throughout the region and will be the same for employees and visitors of the PTO regardless of where it is located. The PTO building will be completed and in use long before the completion of both of these highway infrastructure projects. During their construction, the highway agencies, most notably the Virginia Department of Transportation (VDOT), will be developing programs to encourage commuters to use rapid transit. With its location adjacent

to the Eisenhower Metro Station, the Hoffman PTO site is ideally situated to help VDOT meet this goal.

*There is a disparity between the way the 1990 DEIS on the Naval Systems Command consolidation project describes the major traffic congestion problems from that project and the way the DEIS describes the potential traffic congestion impacts of the two Alexandria projects.*

8.7-1

*Response:* It must be emphasized that the Naval Systems Command consolidation involved 20,000 employees plus visitors as compared to the 7,100 employees/contractors plus visitors assumed for the PTO consolidation. Given that the Navy consolidation was nearly three times larger, creating that much more traffic, the traffic impacts from that project would have been considerably greater than those from the Hoffman Project. Moreover, there have been significant transportation improvements since the Navy consolidation project was considered, such as the new Telegraph Road interchange.

*The focus of the DEIS is limited to connections between the site circulation systems of the various alternatives and the regional highway network and ignores the impact on the regional highway network itself, particularly on either side of the Carlyle and Eisenhower Avenue Sites along the Capital Beltway.*

8.1-4

*Response:* The study area that was used for the Carlyle and Eisenhower Avenue Sites was very reasonable. The Eisenhower Avenue Site is nearly identical to that used by BMI (Hoffman's transportation consultant) in its analysis of the traffic impacts from the Hoffman Project -- an analysis that was approved by the City of Alexandria. Traffic impact analyses

of development projects are normally limited to the connectors to the regional network because the regional network (major arteries and freeways) are continuously analyzed by the Washington Council of Governments and VDOT. For these regional analyses, future development, such as the PTO consolidation, is included in the traffic forecasts.

*The traffic mitigation plans for the Hoffman project will fail to result in an acceptable volume-to-capacity (v/c) criteria of 0.85.* **8.1-4**

*Response:* The traffic impact analysis for the Eisenhower Avenue Site, prepared by BMI and approved by the City of Alexandria, showed that with the improvements to be made by Hoffman, and those planned for the Capital Beltway and the interchange at Telegraph Road and Route 1, all the highway infrastructure within the study area will be within acceptable levels of service.

*The DEIS fails to address the traffic likely to be generated by all users of the PTO, as distinguished from that generated by PTO employees only.* **8.1-5**

*Response:* The traffic analysis in the DEIS was based on the peak hour of traffic generation for both morning and afternoon periods, which is the correct methodology. During those periods there are few, if any, visitors to the PTO. Visitors to the PTO will normally come after the heaviest peak period in the morning and leave before the heaviest peak period in the afternoon. Hence, there is no need to consider non-employees or contractors in the traffic analysis.

*The study area slights Old Town Alexandria and its streets and residential areas, and especially the impacts on Duke Street, Route I, Washington Street, and the George Washington Parkway.*

**8.1-4**

*Response:* The study area that was established for the two Alexandria sites, especially the Eisenhower Avenue Site, was very reasonable. As previously noted, the Eisenhower Avenue Site is nearly identical to the study area used by BMI in its traffic analysis for the Hoffman Project, an analysis that has been approved by the City of Alexandria. Moreover, the roads referred to in Smith Companies' comment would also be used by PTO traffic destined for Crystal City. Therefore, if the impacts to these roads are considered for the two Alexandria projects (which believe is unnecessary), they should be considered for the Crystal City project as well. Moreover, if they are considered, the DEIS should note that the Eisenhower Site would substantially mitigate traffic on these routes from employees and visitors crossing the Wilson Bridge and driving through Old Town to Crystal City.

#### **4. Environmental Health**

##### **Introduction**

The DEIS addresses three categories of potential Environmental Health impacts from the proposed consolidation projects: air quality, noise levels, and hazardous materials. We agree that these three categories are appropriate for discussion in the FEIS. We also concur in the DEIS's assessment of the potential impacts of the Hoffman Project on natural resources, such as surface water, **groundwater**, topography/geology, and vegetation and wildlife. The FEIS should reiterate GSA's conclusions that the Hoffman Project will have no adverse impacts on topography/geology, vegetation, and wildlife, even without mitigation measures, and will have only minimal, short-term effects on surface water and **groundwater** quality, assuming the institution of best management practices (BMP) during construction. Of course, Hoffman is committed to instituting such practices.

##### **Air Quality and Noise Levels**

The DEIS includes a comprehensive discussion of the legal and regulatory framework applicable to the air quality and noise level impacts of the proposed consolidation projects. However, the DEIS addresses the potential impacts of the projects on these environmental factors only briefly in the Executive Summary section of the DEIS, primarily in the summary tables. We suggest that these impacts be addressed in the body of the FEIS as well.

The DEIS summary tables indicate that the potential air quality impacts of the three proposed consolidation projects would be negligible. These impacts include minimal increases in regional pollutant levels due to increases in energy consumption and minor

increases in projected carbon monoxide levels at nearby intersections. While we agree that the potential air quality impacts from the Hoffman Project would be negligible, we suggest that the FEIS provide a fuller explanation of why this would be the case.

For example, the FEIS should note that because development of the Eisenhower Avenue Site is likely to take place even without the PTO consolidation project, and because that alternative development may not have the energy efficiencies expected to be realized by the PTO Project, there could actually be a net long-term reduction in energy use from the Hoffman Project compared to alternative development at the Site, with a corresponding net reduction in energy-related air emissions.

**10.1-z**

With respect to carbon monoxide (CO) emissions, the FEIS should point out that if there is a slight increase in CO levels from the Hoffman Project at the one intersection referenced in the DEIS, this increase will be limited to peak hour traffic conditions because CO-dissipates rapidly into the atmosphere. The FEIS should also note that there will be no net increase in levels of regional CO from the Hoffman Project, given that traffic servicing the PTO will simply be relocated from the existing site to the Eisenhower Avenue Site. Because both sites are within the National Capital Interstate Air Quality Control Region, there should be no *net* impact on regional air quality from relocating the PTO to the Eisenhower Avenue Site.

**9.1-4**

The DEIS implies that other air quality parameters, including ozone levels -- the major air quality problem in this region -- will not be adversely affected by the Hoffman Project. We suggest that the FEIS make this point more explicitly.

Similar to its treatment of air quality impacts, the DEIS addresses the legal and regulatory framework applicable to noise impacts in this geographical area, but does not address the actual impacts of the three PTO proposals in the body of the statement. In the summary tables in the Executive Summary, the DEIS notes that the anticipated noise impacts from all three projects would be virtually identical and quite minor. We suggest this point be made in the body of the FEIS.

**9.2-1**

#### Hazardous Materials

Unlike the other two proposed PTO consolidation sites, there is no evidence that hazardous waste or other hazardous materials were ever deposited or released at the future location of the Hoffman project. The statement on p. 4-125 of the DEIS that Hoffman's sampling and analysis of soils and groundwater at this Site "indicated no elevated levels of any organic or inorganic contaminants in either the soils or the groundwater" underscores this point.

Geotechnical sampling at the Eisenhower Avenue Site encountered what appeared to be landfill debris, and aerial photographs revealed the possibility that small mounds of waste material may once have been deposited on portions of the Site in the 1960s. To evaluate whether and to what extent such material might remain at the site, Hoffman commissioned the firm of Froehling & Robertson, Inc. (F&R) to conduct a Phase II soil and groundwater sampling assessment in 1997 (copy of report attached as **Exhibit 3**). Soil borings were drilled immediately adjacent to the five locations where debris-like material had been observed during the earlier geotechnical sampling. Samples were collected at depths where

**9.3-1****9.3-9**

F&R concluded that buried debris would most likely be concentrated. These soil samples were screened in the field for the presence of chemical odors, visible staining, and the presence of volatile organic compounds (VOCs). In addition, groundwater was sampled and analyzed from the boring location considered to be the most hydraulically downgradient of the disposal areas.

The soil and groundwater samples were analyzed for the presence of volatile organic compounds, semivolatile organic compounds, metals, pesticides, PCBs and pH. No volatile or semivolatile organic compounds, pesticides, or PCBs were detected in soils and pH was found to be typical of soils in this area

**9.3-1**

9.3-9

No elevated levels of any contaminants were found in groundwater. Hence, unlike the other two proposed project sites, groundwater contamination is not a factor at the Eisenhower Avenue site.

The Toxicity Characteristic Leachate Procedure (TCLP), a common test for toxic metal levels in soils, was conducted on all soil samples. TCLP results indicated that cadmium, lead, mercury, silver, and selenium were below detection at each boring location. TCLP results for arsenic, chromium and barium demonstrated that these metals were either not detected or were detected at concentrations well below what could be characterized as “hazardous” under the federal Resource Conservation and Recovery Act (RCRA).

F&R’s Phase II report concludes that “based on results of field sampling and chemical analysis, hazardous materials were not identified at the locations where the samples were

collected.”<sup>42</sup> *Accordingly, we believe it is reasonable to assume that little or no hazardous material is present at the Eisenhower Avenue Property.*

Hoffman anticipates that approximately 194,000 cubic yards of soil will be excavated during site development. Suspect materials will undergo appropriate sampling and analysis. If any excavated material tests hazardous, it will be subject to appropriate handling and disposal requirements. Based on the boring results we have seen so far, we anticipate that the amount of such hazardous materials encountered during site development (if any) will be negligible. At any rate, there are regulated disposal facilities within reasonable distances of the Eisenhower Avenue Site that are authorized to accept contaminated soils and debris, should any such materials be encountered.

In sum, even if small quantities of hazardous materials are detected during site development, these materials will be transported from the Site for proper disposition in compliance with all applicable environmental regulations and safeguards.

It should also be noted that if hazardous materials are encountered, their removal from the Eisenhower Avenue Site will provide a *net environmental benefit* for this area. We request that the FEIS be revised to make this point, and to address in greater detail the results of the Phase II assessment conducted by F&R.

**9.3-10**

The DEIS concludes that:

[t]he nature and extent of dumping activities at the Eisenhower Avenue site remain a concern. The precise locations of the dumping and the types of disposed materials are not well known. Additional subsurface investigation of the site is necessary to further characterize these materials. DEIS p. 3-159.

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<sup>42</sup> Phase II Environmental Site Assessment by Froehling & Robertson, Inc., October 29, 1997, p. 5.

We do not quarrel with GSA's conclusion that additional subsurface investigation is necessary to *precisely* delineate the nature and extent of buried materials (if any) at the Eisenhower Avenue Site. However, given the results of F&R's Phase II assessment, we believe the above statement should be clarified in the FEIS to note that: (1) preliminary subsurface investigations reveal that if there is buried material at the site, all or most of that material is likely to be non-hazardous; (2) because there will be substantial excavation of existing soil as part of the site development work, Hoffman will be required to delineate the nature and extent of buried waste material at that time; and (3) any excavated soil found to be contaminated will be properly managed by Hoffman in compliance with all applicable laws and regulations.

**9.3-1****9.3-9**

Characteristically, the Smith Statement makes several misleading assertions regarding the environmental condition of the Eisenhower Avenue Site. Smith claims that "a major deficiency in this DEIS relates to its discussion of hazardous waste." According to Smith, this includes the inadequate disclosures regarding buried waste at the Eisenhower Avenue Site. Smith is of the opinion that NEPA requires GSA (i.e. Hoffman) to fully define the nature and location of any buried waste on the site *before* a decision is made by GSA.

There is no such requirement in NEPA. Under CEQ's NEPA regulations, where there is incomplete or unavailable information necessary for a federal agency to evaluate "reasonably foreseeable significant adverse effects on the human environment" the agency "shall always make clear that such information is lacking" in the EIS.<sup>43</sup> There is no such lack

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<sup>43</sup> 40 CFR § 1502.22.

of information at the Eisenhower Avenue Site. F&R's Phase II Site Assessment has demonstrated that there is little likelihood of significant amounts of hazardous materials being encountered at this property. Moreover, any material encountered will be properly managed. As the DEIS (p. 4-127) states, "[a]ll construction and operation wastes [from the Hoffman Project] must be managed, handled and transported using methods that comply with all applicable regulations."

In sum, the FEIS need only disclose that: (1) there is a need to delineate more precisely the nature and extent of buried materials at this site *during site development*; (2) the Phase II sampling results found no evidence of hazardous material at the site; and (3) any such material that is encountered during site development must be properly managed.

**9.3-1****9.3-9**

No further disclosures are required by NEPA. The extensive additional environmental sampling that Smith Companies believes to be required at the Eisenhower Avenue site before GSA makes its decision would be **wasteful** and unnecessary, given that such sampling will take place during site development at any rate. CEQ's NEPA regulations make clear that there is no need to collect environmental data that are not essential to an agency's reasonable prediction of a project's adverse environmental impacts." Additional environmental sampling at the Eisenhower Avenue Site is not necessary to allow GSA to make such a reasonable prediction here

Smith Companies appears to argue that, in the absence of a complete delineation of soil contaminant levels at the Eisenhower Avenue Site, the DEIS must adopt a "worst-case"

**1-6**

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<sup>44</sup> 40CFR § 15022(b).

assumption regarding those levels. Noting that the Hoffman Project will include the excavation of an estimated 194,000 cubic yards of subsurface materials, Smith states: “If further investigation shows they require management as hazardous waste, disposal would cost in the order of \$194 million.”

This absurd worst-case assumption not only ignores the F&R Phase II report and grossly exaggerates the cost of properly managing contaminated soils, it is also legally unsupportable. CEQ’s NEPA regulations expressly provide that an EIS need not address such worst-case assumptions. When CEQ eliminated a worst-case disclosure requirement from its NEPA regulations in 1986, it explained that it did so “because it believes, based on further review, that the worst case analysis is flawed, and the new requirements provide a better and more logical means of dealing with the analysis of impacts in the face of incomplete or unavailable information in an EIS.”<sup>45</sup> In 1989, the U.S. Supreme Court upheld this interpretation of NEPA in concluding that the statute merely required agencies to *describe* uncertain environmental impacts, not to conduct worst case analyses of those impacts.<sup>46</sup>

**9.3-1****1-6**

To summarize, there is no support for Smith’s suggestions that Hoffman has failed to adequately delineate the level of soil contamination at the Eisenhower Avenue Site. Nor is there any legal support for Smith’s position that, in the absence of such a complete analysis,

<sup>45</sup> 51 Fed. Reg. 15624 (April 25, 1986)

<sup>46</sup> Robertson v. Methow Valley Citizens Council, 109 S. Ct. 1835, 490 U.S. 332 (1992).

the DEIS should evaluate the worst-case assumption that all of the soil at the site is contaminated by hazardous materials.

Finally, Smith Companies claims that the Eisenhower Avenue Site “appears to be subject to the regulations published under the Virginia Open Dump program.” We strongly disagree.

By the “Virginia Open Dump Program,” Smith is apparently referring to the comprehensive set of regulations in Part IV of Virginia’s solid waste regulations, entitled “Management of Open Dumps and Unpermitted Facilities.”<sup>47</sup> These regulations are intended to implement the prohibition in Section 4005 of the Federal Resource Conservation and Recovery Act (RCRA) against the operation of open dumps after October 9, 1993. The Virginia regulations define what an “open dump” is, establish criteria for determining if such a dump threatens human health or the environment, and establish cleanup standards for such sites. 9.3-s

The regulations define an “open dump” as a municipal solid waste landfill unit, or a non-municipal solid waste management unit that (1) interferes with the natural functions of floodplains; (2) threatens endangered species; (3) causes surface water pollution; (4) contaminates a sole-source aquifer beyond the solid waste boundary; (5) serves as a land-application sludge treatment facility; (6) contributes to disease vectors; (7) is the site of the open burning of waste; or (8) creates explosive gases. Clearly, none of these criteria apply to the Eisenhower Avenue Property, and there is no basis to Smith’s suggestion to the contrary.

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<sup>47</sup> 9 VAC 20-80-70 to 20-80-230.

Attached to the Smith Statement is an assessment of the Carlyle and Eisenhower Avenue Sites by SCS Engineers, Smith's environmental consultant. That assessment concludes that the Eisenhower Avenue Site may be subject to the Virginia Open Dump program because it appears to fail two of the above "open dump" criteria. According to SCS, the two criteria are "the use of solid waste fill in a floodplain," and "releases to groundwater resulting in contamination beyond drinking water standards."<sup>48</sup>

The first criterion quoted by SCS mischaracterizes the standard set out in the "open dump" definition in the Virginia regulation. That standard provides that an "open dump" is not simply a site where solid waste fill is used in a floodplain, but rather a site where such use of the floodplain restricts the flow of the base flood, reduces temporary storage capacity of the floodplain, or results in a washout of solid waste which poses a threat to human health or the environment.<sup>49</sup> Obviously, none of these descriptions apply to the Eisenhower Avenue Site.

**9.3-s**

The second criterion quoted by SCS also misstates the applicable Virginia regulation. As noted above, the correct criterion is that the solid waste site must contaminate a sole-source aquifer or drinking water source *beyond the solid waste boundary*. Smith does not indicate how SCS could possibly conclude that the Eisenhower Avenue Site is failing this criterion, especially given that no groundwater contamination *has even been detected* at the site.

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<sup>48</sup> See Attachment C to Smith Statement, p. 1 of 5 of Eisenhower Avenue Site assessment

<sup>49</sup> See 9 VAC 20-80-180 (B)(1)

## 5. The Environmentally Preferable Alternative

CEQ's NEPA regulations require that, in cases where an EIS has been prepared, the Record of Decision (ROD) must identify all alternatives that were considered, "specifying the alternative or alternatives which were considered to be environmentally preferable."<sup>50</sup> The CEQ explains this requirement as follows: "Ordinarily this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources."<sup>51</sup> The CEQ also notes that the "lead agency official responsible for the EIS is encouraged to identify the environmentally preferable alternative(s) in the EIS," and that "commenters from other agencies and the public are also encouraged to address this question."<sup>52</sup>

The Hoffman Project is clearly the environmentally preferable alternative of the three consolidation options under consideration. Without repeating the detailed disclosures in the DEIS, as updated and clarified by the above comments, we emphasize the following key points in this regard.

- **Hazardous Waste**

Of the three project sites, the Eisenhower Avenue Site is the only one where groundwater contamination has not been documented. It is also the only site where there have

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<sup>50</sup> 40 CFR § 1505.2(b)

<sup>51</sup> See "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," at 46 Fed. Reg. 18026, 18028 (March 23, 1981).

<sup>52</sup> *Id.*

been no leaking underground storage tanks. Moreover, soil and groundwater sampling results indicate that if waste material has been buried at this site in the past, it is most likely non-hazardous.

In contrast, severe and widespread soil and groundwater contamination has been documented at the Carlyle Site, and may take years to remediate. This contamination apparently resulted from the past use of this site as a rail yard, scrap yard and landfill. Although portions of the site have been undergoing remediation, other portions have not yet been adequately investigated. DEIS p. 3-149 - 3-155.

The Crystal City Site is also contaminated, a point the Smith Companies chose to ignore in its comments. As noted in the DEIS, an environmental investigation in 1991-1992 identified fuel oil contamination in groundwater and in-subsurface soil samples. The source was determined to be a leaking 12,000-gallon underground storage tank, which is still in use. DEIS p. 3-147. To address this groundwater problem, the site owner installed a groundwater treatment system, which remains in operation. The Virginia Department of Environmental Quality cannot predict how long this treatment system will have to remain in operation. In addition, the DEIS identifies the existence of three other leaking underground tanks at the Crystal City Site, the environmental impacts of which have yet to be determined. *Id.*

**Comment  
Noted**

- **Archaeological and Historical Resources**

As discussed above, we do not anticipate any adverse impacts from the Hoffman Project on archaeological or historical resources. Any such unforeseen impacts will be

mitigated by archaeological testing, in coordination with the City's archaeological experts.

No adverse impacts on historical resources are anticipated, and none are noted in the DEIS.

In contrast, the Crystal City Site will have an adverse effect on an historic resource: the George Washington Memorial Parkway. DEIS p. 4-43. A new building in the Crystal City Complex, 875 feet long and located only 200 feet from the Parkway, "would be a direct impact that would have a negative effect on two aspects of the Memorial Parkway's integrity: its setting and feeling." *Id.* Both the VASHPO and the NCPC have concurred in this conclusion. It is difficult to conceive of how this impact can be mitigated by a major design change in the Crystal City proposal without frustrating key aspects of GSA's stated purpose and need for this consolidation project.

7.1-7

7.2-4

Although the DEIS states that the Carlyle Project will not have an adverse visual impact on the George Washington Masonic National Memorial, we note that, because of its visual proximity to the Memorial, a number of commenters at a public meeting held by GSA strongly disagreed with this assessment.

- **Transportation and Land Use Policies and Controls**

As stated previously, the Hoffman Project has now obtained all necessary land use and zoning approvals from the Alexandria City Council. The project, with approved mitigation measures, has been found fully consistent with the Small Area Plan and CDD Zoning.

In contrast, the Carlyle Project "would significantly alter the approved development plan for the Carlyle development" in three important ways: (1) it would close Dulaney Street

and Emerson Avenue, changing circulation throughout the entire area; (2) it would concentrate parking in two partially above-grade parking structures that would separate the PTO from future development east and west; and (3) it would concentrate office uses in the center of the development, rather than mixing office, residential, retail, and hotel uses throughout. DEIS p. 4-18. The project has yet to obtain all required land use and zoning approvals from the Alexandria City Council.

We also believe that the Hoffman Project offers transportation-related benefits that make the Eisenhower Avenue Site superior to the other two sites. The anticipated roadway improvements and other traffic mitigation measures discussed in these comments--and especially the new flyover ramp--will allow motorists using the Beltway to access the Eisenhower Avenue Site with minimal time on local roadways, an advantage not offered by the other projects.

**Comment  
Noted**

In sum, given the severe environmental contamination problems of the Carlyle Site, the unacceptable impact of the Crystal City proposal on the George Washington Memorial Parkway, and the other adverse environmental impacts of these two projects noted above, we believe the Hoffman proposal is clearly the environmentally preferable one. We ask that the FEIS also state this conclusion.

## HI. Conclusion

Hoffman appreciates this opportunity to comment on the DEIS. We believe that if the disclosures in the draft statement are updated and clarified as requested above, the FEIS will

present a complete and accurate assessment of the potential environmental impacts of the proposed consolidation projects, and particularly of the Hoffman Project, and will be fully consistent with the requirements of the National Environmental Policy Act.<sup>53</sup> We believe it is particularly worth noting in the FEIS that Hoffman has fully responded to all of the suggested areas of mitigation. In our opinion, there is no doubt that the Hoffman Project is the “environmentally preferable” of the three alternatives, and we ask that the FEIS make this explicit. Again we wish to commend GSA on the thorough, accurate and well-written disclosures in the DEIS.

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<sup>53</sup> Smith Companies is highly critical of the DEIS for failing to present a more detailed assessment of the environmental impacts of the no-action alternative. We believe it is appropriate that the DEIS present a somewhat abbreviated discussion of this alternative, given that the potential impacts of taking no action are very similar to the potential impacts of the proposed Crystal City consolidation. We believe the FEIS should emphasize this point, and should also point out in greater detail where the potential impacts of the Crystal City project and those of the no-action alternative might differ. The FEIS should also point out that the no-action alternative clearly does not meet the purpose and needs of the PTO consolidation project.

Exhibit 1